THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.16553 OF 2003

-

-

Between;

R.Ravinder son of Gangaram

…Petitioner

vs.

The Assistant General Manager, State Bank of Hyderabad and another

….Respondents.

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.16553 OF 2003

ORAL ORDER–

Heard the learned counsel for the petitioner Sri M.Surender Rao and Sri A.Suryanarayana learned Standing Counsel for the State Bank of Hyderabad.

The writ petition is filed aggrieved by the continuance of departmental enquiry proceedings against the petitioner during the subsistence of the petitioner's prosecution on what is alleged to be substantially similar charges.

Against the petitioner a complaint was instituted and numbered as Crime No.54 of 2001. After investigation the charge sheet was filed and the petitioner being prosecuted in Calendar Case No.1290 of 2002 on the file of the learned Additional Judicial First Class Magistrate, Nizamabad under Sections.406 and 420 of the Indian Penal code,1860. The petitioner is alleged to have cheated the Bank and committed breach of trust in respect of the accounts of customers of the Bank. Departmental proceedings were also initiated against the petitioner and on 05-08-2002 a charge memo was issued alleging:-

a. That he had opened joint account in the name of himself and family members in the Branch which he was working without seeking prior permission for doing so contrary to the operative instructions of the Bank;

b. That he had put through certain specified credit transactions in the said joint account by raising unauthorized debits to the accounts of other customers and that these transactions for fraudulent and fictitious in nature;

c. That out of the amount so credited to the joint account, the petitioner had withdrawn an amount of Rs.3,94,250/- on several dates through the specified instruments indicated against each of the debits, the withdrawals were written in the petitioner's handwriting and the amounts withdrawn despite being fully conscious with the credits to these accounts of the petitioner were not genuine; and

d. That the petitioner had used withdrawal forms for the specified accounts which had a cheque book facility and from the above payments, the petitioner had drawn an amount of Rs.3,01,450/- by obtaining a loose cheque of a specified account and the petitioner signed the cheque in the name of some other individual by forging the signature of the other account holder and has thus manipulated the customers' accounts by unauthorized debits and derived personal pecuniary benefits by himself and jointly with others and also had withdrawn the amounts.

Other serious allegations were specified in the charge-memo dated.05.08.2002.

Alleging that simultaneous conducting of criminal proceedings and departmental proceedings was impermissible, the petitioner filed W.P.No.3710 of 2003 for the relief of a direction to the respondents-Bank not to proceed with the departmental enquiry till the completition of the proceedings in C.C.No.1290 of 2002. A learned single judge of this Court dismissed the writ petition by the judgment dated 21-03-2003. The petitioner preferred an appeal and Writ Appeal No.568 of 2003 was disposed of preserving liberty to the petitioner to approach the enquiry officer with a request to stay the departmental proceedings while directing the enquiry officer that if such request be made the same be considered in accordance with the relevant regulations. Thereafter in April,2003 the petitioner represented to the enquiry officer seeking deferment of the departmental enquiry during the continuance of the prosecution.

Alleging that the enquiry officer did not rule on the petitioner's representation for deferment of the disciplinary proceedings, this writ petition is filed.

Sri M.Surendera Rao learned counsel for the petitioner submits that simultaneous conduct of the departmental proceedings and the prosecution is prejudicial to the petitioner as the charges in the criminal case and the departmental proceedings are identical; charge Nos.2 to 5, and 9 are similar to the charges in the criminal case and therefore the departmental enquiry should not be conducted, is the substance of the petitioner's case. The petitioner relies on the decision of the Supreme Court in ***Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd., and Anr***. to support his plea that simultaneous conduct of departmental enquiry with criminal proceedings is impermissible.

On behalf of the respondents, a counter-affidavit is filed by the Assistant General Manager, Regional Office, Hyderabad. It is stated on behalf of the respondents that admittedly the charges in the departmental proceedings are not at all identical with the charges for which the petitioner is arraigned in C.C.No.1290 of 2002. It is also stated that the prosecution of the petitioner in C.C.No.1290 of 2002 is proceeding at a snail's pace and as such the respondents-Bank was rationally satisfied that the disciplinary proceedings ought not to be deferred to await the conclusion or outcome of the prosecution.

On behalf of the respondents reliance is placed on the judgment of the Supreme Court in ***Hindustan Petroleum Corporation Ltd., & Ors Vs. Sarvesh***

Berry.

The principles deducible from the judgment of the Supreme Court in ***Paul Anthony*** case (1st supra) were again considered by the Supreme Court in ***H.P.C.L***. case (2nd supra) and the legal position and the operative ratio is summarized in ***H.P.C.L***. case as under:-

> "it is fairly well settled position in law that on basic principles proceedings in criminal case and departmental proceedings can go on simultaneously, except in some cases where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. It is in these cases, the Court has to decide, taking into account special features of the case, whether simultaneous continuance of both would be proper.
>
> The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act,1872. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.

In the case on hand the request of the petitioner for deferment of the disciplinary proceedings was rejected by the Enquiry Officer and the rejection was communicated to the petitioner and acknowledged by him on 07-10-2004 as stated in paragraph No.4 of the counter-affidavit. Even according to the petitioner the charges for which he is being proceeded against the departmentally are not at identical to the offences for which he is being prosecuted in C.C.1290 of 2002. The sanctions if found guilty in the criminal proceedings and the sanctions which follow on a finding of the guilt in departmental proceedings are dissimilar. Having regard to the gravity of the charges alleged against the petitioner which are intrinsically related to his conduct as an officer of the Bank and having regard to the indisputable power and authority of the respondents-Bank to proceed against the petitioner even

if he be acquitted of the criminal charges, it does not appear appropriate that the disciplinary proceedings should be deferred interminably till the conclusion of C.C.1290 of 2002. The respondents-Bank is a public financial institution and an early disposal of allegations of serious misconduct and financial irregularities by its employee is a core value that informs the efficiency of its function. Public interest would be grievously subverted by interminably delay in the conduct of the disciplinary proceedings and the facts of this case do not recommend the suspension of disciplinary proceedings during the pendency of C.C.1290 of 2002, in particular as the petitioner is additionally charged of serious transgression of the Bank instructions with regard to the opening of accounts by an employee of the Bank in the same Branch in which he employed, which is not a charge in C.C. 1290 of 2002. It must also be noted as pointed out in ***H.P.C.L*** case (2nd supra) that the standards of proof required in disciplinary proceedings is dissimilar to the one mandated in prosecution. No serious prejudice to the petitioner by the simultaneous conduct of departmental inquiry and prosecution is established.

For all the aforesaid reasons this Court finds no justification for grant of relief to the petitioner. The writ petition is without merits and is accordingly dismissed. The interim order dated 26-09-2003 stands dissolved. There shall be no order as to costs.

_____

GODA RAGHURAM,J

2ND DECEMBER 2005

Note:

Issue cc in three(3)

Days.

(B/O)

***TSNR**